

AMENDED IN ASSEMBLY JANUARY 17, 2014

AMENDED IN ASSEMBLY JANUARY 6, 2014

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1356**

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**Introduced by Assembly Member Bloom**

February 22, 2013

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An act to amend Section 1708.7 of the Civil Code, relating to stalking.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1356, as amended, Bloom. Stalking: remedies.

Existing law provides that a person is liable for the tort of stalking if he or she engaged in a pattern of conduct intended to follow, alarm, or harass the plaintiff, that resulted in the plaintiff reasonably fearing for his or her safety, or the safety of an immediate family member, and the person has either made a credible threat with the intent to place the plaintiff in reasonable fear for his or her safety, or that of an immediate family member, and how continued in his or her pattern of conduct after the plaintiff demands that he or she cease, or has violated a restraining order.

This bill would include a pattern of conduct intended to place the plaintiff under surveillance within those elements defining the tort of stalking. The bill would permit the plaintiff to show, as an alternative to the plaintiff reasonably fearing for his or her safety or that of a family member, that the pattern of conduct resulted in the plaintiff suffering substantial emotional distress, and that the pattern of conduct would cause a reasonable person to suffer substantial emotional distress. The bill would require the plaintiff to show that the person has either made

a credible threat with the intent to place the plaintiff in reasonable fear for his or her safety, or that of an immediate family member, or, reckless disregard for the safety of the plaintiff or that of an immediate family member. The bill would relieve the plaintiff, under exigent circumstances, as specified, of the requirement to demand that the defendant cease his or her behavior. The bill would also define the terms “follows,” “place under surveillance,” and “substantial emotional distress” for purposes of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1708.7 of the Civil Code is amended to  
2     read:  
3     1708.7. (a) A person is liable for the tort of stalking when the  
4     plaintiff proves all of the following elements of the tort:  
5     (1) The defendant engaged in a pattern of conduct the intent of  
6     which was to follow, alarm, place under surveillance, or harass  
7     the plaintiff. In order to establish this element, the plaintiff shall  
8     be required to support his or her allegations with independent  
9     corroborating evidence.  
10    (2) As a result of that pattern of conduct, either of the following  
11    occurred:  
12    (A) The plaintiff reasonably feared for his or her safety, or the  
13    safety of an immediate family member. For purposes of this  
14    subparagraph, “immediate family” means a spouse, parent, child,  
15    any person related by consanguinity or affinity within the second  
16    degree, or any person who regularly resides, or, within the six  
17    months preceding any portion of the pattern of conduct, regularly  
18    resided, in the plaintiff’s household.  
19    (B) The plaintiff suffered substantial emotional distress, and  
20    the pattern of conduct would cause a reasonable person to suffer  
21    substantial emotional distress.  
22    (3) One of the following:  
23    (A) The defendant, as a part of the pattern of conduct specified  
24    in paragraph (1), made a credible threat with either (i) the intent  
25    to place the plaintiff in reasonable fear for his or her safety, or the  
26    safety of an immediate family member, or (ii) reckless disregard  
27    for the safety of the plaintiff or that of an immediate family

1 member. In addition, the plaintiff must have, on at least one  
2 occasion, clearly and definitively demanded that the defendant  
3 cease and abate his or her pattern of conduct and the defendant  
4 persisted in his or her pattern of conduct unless exigent  
5 circumstances make the plaintiff's communication of the demand  
6 impractical or unsafe.

7 (B) The defendant violated a restraining order, including, but  
8 not limited to, any order issued pursuant to Section 527.6 of the  
9 Code of Civil Procedure, prohibiting any act described in  
10 subdivision (a).

11 (b) For the purposes of this section:

12 (1) "Pattern of conduct" means conduct composed of a series  
13 of acts over a period of time, however short, evidencing a  
14 continuity of purpose. Constitutionally protected activity is not  
15 included within the meaning of "pattern of conduct."

16 (2) "Credible threat" means a verbal or written threat, including  
17 that communicated by means of an electronic communication  
18 device, or a threat implied by a pattern of conduct, including, but  
19 not limited to, acts in which a defendant directly, indirectly, or  
20 through third parties, by any action, method, device, or means,  
21 follows, harasses, monitors, surveils, threatens, or interferes with  
22 or damages the plaintiff's property, or a combination of verbal,  
23 written, or electronically communicated statements and conduct,  
24 made with the intent and apparent ability to carry out the threat so  
25 as to cause the person who is the target of the threat to reasonably  
26 fear for his or her safety or the safety of his or her immediate  
27 family.

28 (3) "Electronic communication device" includes, but is not  
29 limited to, telephones, cellular telephones, computers, video  
30 recorders, fax machines, or pagers. "Electronic communication"  
31 has the same meaning as the term defined in Subsection 12 of  
32 Section 2510 of Title 18 of the United States Code.

33 (4) "Follows" means to move in relative proximity to a person  
34 as that person moves from place to place or to remain in relative  
35 proximity to a person who is stationary or whose movements are  
36 confined to a small area but does not include following the plaintiff  
37 within the residence of the defendant. *For purposes of the liability*  
38 *created by subdivision (a), "follows" does not include any lawful*  
39 *activity of private investigators licensed pursuant to Article 3*  
40 *(commencing with Section 7520) of Chapter 11.3 of Division 3 of*

1 *the Business and Professions Code, or of law enforcement*  
2 *personnel or employees of agencies, either public or private, who,*  
3 *in the course and scope of their employment, encourage or attempt*  
4 *to engage in any conduct or activity to obtain evidence of suspected*  
5 *illegal activity or other misconduct, suspected violation of any*  
6 *administrative rule or regulation, suspected fraudulent conduct,*  
7 *or any suspected activity involving a violation of law or business*  
8 *practice or conduct of a public official that adversely affects public*  
9 *welfare, health, or safety. For purposes of the liability created by*  
10 *subdivision (a), “follows” also does not include any newsgathering*  
11 *conduct temporally connected to a newsworthy event.*

12 (5) “Harass” means a knowing and willful course of conduct  
13 directed at a specific person which seriously alarms, annoys,  
14 torments, or terrorizes the person, and which serves no legitimate  
15 purpose. The course of conduct must be such as would cause a  
16 reasonable person to suffer substantial emotional distress, and must  
17 actually cause substantial emotional distress to the person.

18 (6) “Place under surveillance” means remaining present outside  
19 of the plaintiff’s school, place of employment, vehicle, residence,  
20 other than the residence of the defendant, or other place occupied  
21 by the plaintiff. For purposes of the liability created by subdivision  
22 (a), “place under surveillance” does not include any lawful activity  
23 of private investigators licensed pursuant to Article 3 (commencing  
24 with Section 7520) of Chapter 11.3 of Division 3 of the Business  
25 and Professions Code, or of law enforcement personnel or  
26 employees of agencies, either public or private, who, in the course  
27 and scope of their employment, encourage or attempt to engage  
28 in any conduct or activity to obtain evidence of suspected illegal  
29 activity or other misconduct, suspected violation of any  
30 administrative rule or regulation, suspected fraudulent conduct, or  
31 any suspected activity involving a violation of law or business  
32 practice or conduct of a public official that adversely affects public  
33 welfare, health, or safety. For purposes of the liability created by  
34 subdivision (a), “place under surveillance” also does not include  
35 any newsgathering conduct ~~temporarily~~ *temporally* connected to  
36 a newsworthy event.

37 (7) “Substantial emotional distress” shall not be construed to  
38 have the same meaning as the “severe emotional distress”  
39 requirement for intentional infliction of emotional distress.  
40 “Substantial emotional distress” does not require a showing of

1 physical manifestations of emotional distress; rather, it requires  
2 the evaluation of the totality of the circumstances to determine  
3 whether the defendant reasonably caused the plaintiff substantial  
4 fear, anxiety, or emotional torment.

5 (c) A person who commits the tort of stalking upon another is  
6 liable to that person for damages, including, but not limited to,  
7 general damages, special damages, and punitive damages pursuant  
8 to Section 3294.

9 (d) In an action pursuant to this section, the court may grant  
10 equitable relief, including, but not limited to, an injunction.

11 (e) The rights and remedies provided in this section are  
12 cumulative and in addition to any other rights and remedies  
13 provided by law.

14 (f) This section shall not be construed to impair any  
15 constitutionally protected activity, including, but not limited to,  
16 speech, protest, and assembly.

17 (g) This act is an exercise of the police power of the state for  
18 the protection of the health, safety, and welfare of the people of  
19 the State of California, and shall be liberally construed to effectuate  
20 those purposes.